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ABDUL QAYYUM VS BAIT ULLAH ETC.
Civil Appeal No. 14/13 of 2026

IN THE COURT OF HAO NAWAZ,
DISTRICT JUDGE, ORAKZAI (AT BABER-MELA)

CIVIL APPEAL NO. : 14/13 OF 2026
DATE OF INSTITUTION : 23.01.2026
DATE OF DECISION : 03.09.2026

ABDUL QAYYUM KHAN S/O NIAZ BAHADAR, CASTE MISHTI,
TAPA MAMOZAI, R/O KUNDAYE, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

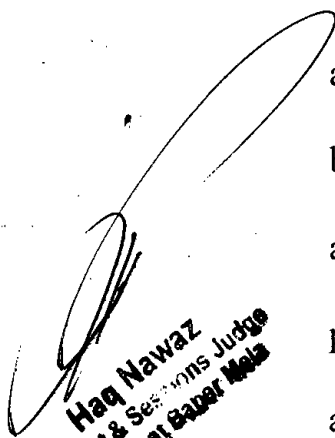
BAIT ULLAH KHAN S/O ABDUL MALIK AND OTHERS, CASTE
MISHTI, TAPA MAMOZAI, R/O KUNDAYE, DISTRICT ORAKZAI

..... (RESPONDENTS)

JUDGEMENT
03.09.2026

This civil appeal was preferred against the judgment and decree dated 10.11.2025 passed by the Court of Civil Judge, Tehsil Courts Kalaya, Orakzai, whereby Civil Suit No. 137/1 of 2022 was dismissed.

2. The suit was brought by the plaintiff for declaration to the effect that he is owner of the suit land measuring 01 Jeerab, situated at village Kundaye, District Orakzai, described with four boundaries and names of the fields in headnote of the plaint. He also prayed for cancellation of the sale agreement between the parties due to non-payment of sale consideration and, in the alternative, for breach of terms and condition of the agreement in prayer 'B' of the plaint. He also sought permanent and mandatory injunction to restrain the defendants from causing interference in the suit property by raising construction or alienating the same in the name of defendant No. 4, in relief 'C' of the plaint. The possession of the suit land and demolition of any construction raised during pendency of the suit was sought

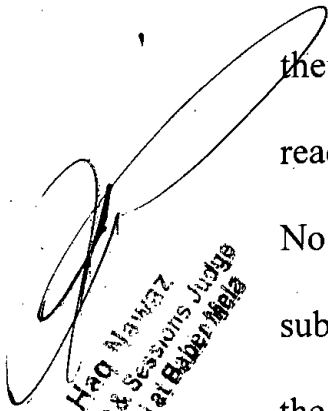

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for in relief 'D' with recovery of Rs. 30 lacs as compensation in prayer 'e' of the plaint.

3. As per averments of the plaint, the plaintiff had sold the suit property in favour of the defendants No. 1 to 3 in lieu of Rs. 60,000/-, who promised to pay the sale consideration to him. There was no written agreement between the parties due to mutual trust and consent. The defendants No. 1 to 3 started using delaying tactics in paying the sale consideration and ultimately to pay it to the plaintiff despite of their continuous benefits from the suit property. The plaintiff further submitted that he is entitled to get back the suit property due to non-payment of sale consideration by the defendants No. 1 and 2. The plaintiff submitted an application to the local police and a jirga was convened between the parties on 07.08.2022 wherein the plaintiff was directed to produce two witnesses otherwise the defendant No. 1 would take special oath. The plaintiff was ready to produce witnesses before the jirga but the defendant No. 1 did not comply the jirga directions. The plaintiff further submitted that the defendant No. 1 to 3 have no right to alienate the suit property in favour of the defendant No. 4 in the shape of exchange or sale and the defendant No. 4 and his brothers and sisters (defendants No. 5 to 9) have got no concern with the suit property. He repeatedly asked the defendants to refrain from their illegal acts and hand over possession of the suit property to him, but they refused; therefore, the suit was filed.


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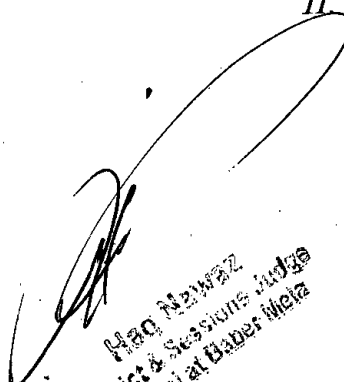
4. The defendants No. 1 and 2 contested the suit by filing their written statement. It was alleged that the suit field namely "Sanam Khet" was exchanged with a field at "Kass Seera". Since, the area of the suit field was more than the exchanged field; therefore, an amount of Rs. 60,000/- was paid to plaintiff and his brother in 1998 in the hujra of plaintiff in presence of witnesses. The remaining defendants were placed and proceeded against ex-parte; however, the defendant No. 3 recorded his statement before the Court on 13.05.2024 in favour of the plaintiff. Pleadings of the parties were reduced to the following issues;

I. *Whether the plaintiff has got a cause of action?*

II. *Whether suit property is ownership of plaintiff, which he previously sold to defendants in lieu of Rs. 60,000/- as sale consideration and defendants No. 1 to 3 promised to pay the sale consideration to plaintiff and according plaintiff handed over the possession of the suit property to defendants?*

III. *Whether plaintiff is entitled to the recovery of Rs. 3000000/- as per present value of the suit property from the defendants?*

IV. *Whether previously the elders of defendants No. 1 and 2, namely Abdul Malik, Mir Ajab*


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Khan and Fazal Manan, had exchanged the suit property known as Sanam field with one Fazal Manan field known as Sera with plaintiff and as a sum of Rs. 60,000/- in the Hujra of plaintiff paid to the plaintiff?

V. *Whether plaintiff was declared as parr in the jirgas regarding the suit property convened between the parties to the suit?*

VI. *Whether the plaintiff is entitled to the decree as prayed for?*

VII. *Relief.*

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit through his impugned judgement and decree; hence, this appeal was preferred.

6. I have heard learned counsel for the parties and perused the record.

7. PW-1 deposed before the Court that the sale transaction was struck down about 20-25 years back for a consideration of Rs. 60,000/-. Possession of the suit property was handed over to defendants, but payment was not made in his presence. In his cross examination, he admitted that the transaction was struck down between the plaintiff and defendants No. 1 and 2 only. He further admitted that the plaintiff has not complained about non-

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payment of the sale consideration to him during the last 25 years.

8. PW-2 deposed that the sale transaction was struck down in presence of the defendant No. 3, 2 and 1 for a consideration of Rs. 60,000/- and no payment was made in his presence. In his cross examination, the said witness admitted that he remained abroad from 1997 to 2018, which shows that his presence at the time of sale transaction in question in the village was out of question.

9. Similarly, the PW-3 deposed that the suit property was sold out in favour of defendants No. 3, 2 and 1 for a consideration of Rs. 60,000/- and no payment was made to plaintiff in his presence. In his cross examination, the PW-3 denied the assertions made in the plaint that the plaintiff was ready to produce evidence before the Jirga, but submitted that the plaintiff failed to produce evidence and was found condemned (*parh*). He further submitted that the defendant No. 1 was obliged to take oath in the jirga which he could not take due to leaving the jirga by the defendant No. 3.

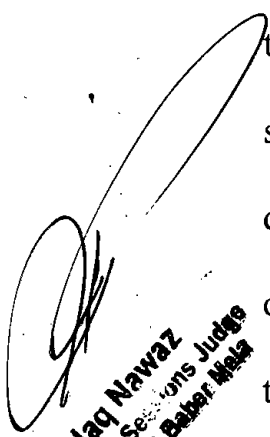
10. The plaintiff recorded his statement before the Court as PW-4. He reiterated the facts as narrated in the plaint. In his cross examination, he admitted that PW-2 and 3 were not the witnesses of sale transaction rather PW-1 (Khan Akbar) and one Khaista Khan were witnesses of the transaction in question. He further admitted that he could not produce witnesses before the Jirga nor he took oath from the defendants and was held

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condemned (*parh*) by the jirga members. The jirga verdicts dated 07.08.2022 and 19.08.2022 were produced by the defendants before the Court as Ex. PW 4/X-1 and Ex. PW 4/X-2.

11. On the other hand, the defendant No. 1 recorded his statement as DW-1. He also produced two witnesses as DW-2 and DW-3. All of them deposed that the suit field in the name of "Sanam Khet" was exchanged by the plaintiff with the defendants against their field namely "Kass Seera". They further deposed that the area of Sanam Khet was more than Kass Seera; therefore, an amount of Rs. 60,000/- was paid by father of the defendant No. 1 and Mir Ajab Khan to the plaintiff in his hujra in the year 1998. They were subjected to sufficient cross examination but nothing contradictory to the benefit of plaintiff could be brought on record.

12. In view of the above statement of the sole witness of the sale transaction i.e., Khan Akbar (PW-1) that the transaction was struck down between father of the defendant No. 1 and defendant No. 2 only, the statement of defendant No. 3 in favour of the plaintiff is meaningless as he was proved to be not party to the sale transaction. The jirga proceedings were also proved to have ended in favour of the contesting defendants and the DW-2 and DW-3 have also deposed about the payment of Rs. 60,000/-, in addition to exchange of properties between the parties, to the plaintiff in presence of his brother by the father


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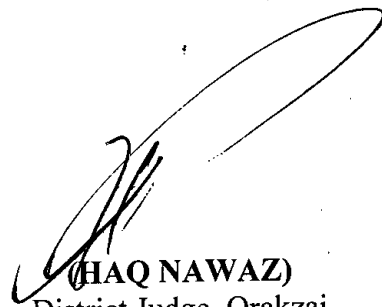
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of defendant No. 1 and one Mir Ajab Khan in the hujra of plaintiff in 1998.

13. In view of the above facts and circumstances, the learned trial Court has rightly dismissed the suit of the appellant/plaintiff after correct appreciation of evidence available on record. The appeal, being devoid of merits, is dismissed. File of this Court be consigned to record room after its necessary completion and compilation.

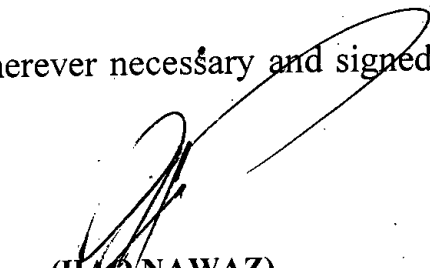
Announced:
03.09.2026


(HAQ NAWAZ)
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CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 03.09.2026


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela